



U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

FEB 4 2002

C. Robert Heath, Esq.  
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Austin, Texas 78701-2443

Dear Mr. Heath:

This refers to your request that the Attorney General reconsider and withdraw the December 14, 1998, objection interposed under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, to charter amendments that provide for a change in the method of election for the city council from six single-member districts to four single-member districts and two elected at large with numbered posts, a change from a plurality to a majority vote requirement, and redistricting criteria for the City of Galveston in Galveston County, Texas. We received your request on December 5, 2001.

Your letter also requests that if the Attorney General withdraws the objection to the above charter changes, the Attorney General should then proceed with his analysis of the city's proposed 2001 redistricting plan (identified in your letter as Plan Z) which the city proposes to use in connection with the four single-member, two at large framework.

Your letter acknowledges that if the Attorney General declines to withdraw the December 14, 1998, objection, Redistricting Plan Z will be moot. Accordingly, the city has also presented for Section 5 review a 2001 redistricting plan (Plan C) for use under the six single-member district method of election.

We have reconsidered our earlier determination in this matter based on the information and arguments you have advanced in support of your request, along with the other information in our files and comments received from other interested persons. Based on this review we have concluded that the charter amendment requiring a majority vote for the election of the mayor and city council would not have a retrogressive effect on the ability of minority voters to elect candidates of their choice. Accordingly, pursuant to Section 51.48(b) of the Procedures for the Administration of Section 5, the objection interposed to the majority vote requirement for the election of the mayor and members of the city council is hereby withdrawn. However, we note that failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See 28 C.F.R. 51.41.

We cannot reach a similar conclusion with regard to your request for reconsideration of the remaining changes.

The city's prior history with regard to the enforcement of the Voting Rights Act is generally set out in our December 14, 1998, objection letter and need not be repeated in depth here. The record shows that it was not until the replacement in 1993 of the at-large election system by the court ordered single-member district system that African-American voters achieved a significant level of representation on the city council reflective of their voting strength in the city which continues to this day.

While our procedural guideline states that a submitting authority may request reconsideration of an objection "at any time," it recommends that such requests "should contain relevant information or legal argument." Procedures for the Administration of Section 5 (28 C.F.R. 51.45).

In support of your request for reconsideration, your letter notes the following changed circumstances since the 1998 objection, which you request that the Attorney General consider: (1) the availability of more current demographic data as a result of the release of the 2001 Census; and (2) the occurrence of a city election in which the incumbent Hispanic mayor was reelected.

We certainly agree that the most recent census data is critically important in evaluating the current impact of proposed voting changes, and of redistricting plans in particular. Our review of the census data has confirmed the accuracy of your statistics for the existing plan and the alternative plans you have presented. We also note your statement that the 2001 Census revealed that in the ten years since the 1990 Census, Hispanics supplanted African-Americans as the predominant minority group in the city. However, your letter does not explain the significance of this demographic shift with regard to the essential question in the Section 5 analysis: Do the proposed changes reflect a purpose to retrogress minority voting strength, and do they result in retrogression?

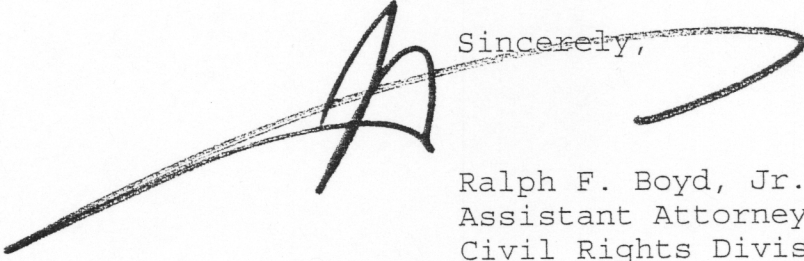
Similarly, the results of the 2000 city election, while certainly relevant to our analysis, would be significant if they indicated that racial bloc voting was no longer an operative factor in city elections. However, Mayor Quiroga's reelection, when considered together with our previous analyses of racial bloc voting in the city (referred to in our December 14, 1998, objection letter) fails to persuade us that voting in the City of Galveston is no longer racially polarized.

In light of these considerations, I remain unable to conclude that the City of Galveston has carried its burden of showing that the submitted changes have neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. Therefore, on behalf of the Attorney General, I must decline to withdraw the objection to the charter amendments that provide for a change in the method of election for the city council from six single-member districts to four single-member districts and two elected at large with numbered posts and the redistricting criteria.

As we previously advised, you may seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. We remind you that until such a judgment is rendered by that court, the objection by the Attorney General remains in effect and the proposed changes continue to be legally unenforceable. See Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.



Your request that the Attorney General review for preclearance the city's proposed six single-member districting plan if he declines to withdraw the objection to the charter changes will be addressed in a separate letter.



Sincerely,

Ralph F. Boyd, Jr.  
Assistant Attorney General  
Civil Rights Division